Supreme Court, U. S.
FILED
AUG 30 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-77

RASMUSSEN DRILLING, INC.,
a Colorado Corporation licensed to
do business in Wyoming,
Petitioner,

v.

KERR-McGEE NUCLEAR CORPORATION
AND
KERR-McGEE CORPORATION,
Respondents

RESPONDENTS' STATEMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

HOLME, ROBERTS & OWEN
PETER H. HOLME, JR.
EDMOND F. NOEL, JR.
Attorneys for Respondents
1700 Broadway, Suite 1800
Denver, Colorado 80290

Telephone: (303) 861-7000

OF COUNSEL:

WILLIAM T. SCHWARTZ, ESQ.
500 Consolidated Royalty Building
Casper, Wyoming 82601

INDEX

	Page
OPINION BELOW	1
STATUTES INVOLVED	1
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	2
ARGUMENT	7
A. Certiorari Should Be Denied	7
B. Petitioner Has Presented No True Issue For Resolution By This Court. Purely Factual Issues and a State's Interpretation of It's Local Laws Are Not Proper Matters for Review on Certiorari	9
CONCLUSION	14
APPENDIX — STATUTES INVOLVED	15

CITATIONS

Page

Cases:

Columbia Standard Corp. v. *Ranchers Exploration & Development Co.*, 468 F.2d 547 (10th Cir. 1972) *cert. denied*, 410 U.S. 991 (1973) 13

Ex parte Lau Ow Bew, 141 U.S. 583 (1891) 7

Globe Mining Co. v. *Anderson*, 78 Wyo. 17, 318 P.2d 373 (1957) 13

Hagerman v. *Thompson*, 68 Wyo. 515, 235 P.2d 750 (1951) 11

Kanab Uranium Corp. v. *Consolidated Uranium Mines, Inc.*, 227 F.2d 434 (10th Cir. 1955) 13

Ranchers Exploration & Development Co. v. *Anaconda Co.*, 248 F. Supp 708 (D. Utah 1965) 13

Rice v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955) 8

Union Oil Co. v. *Smith*, 249 U.S. 337 (1919) 13

Statutes:

Wyoming Statutes 1957 §30-1 ..... 1, 11

Wyoming Statutes 1957 §30-2 1

CITATIONS — Continued

Page

Wyoming Statutes 1957 §30-3 ..... 1, 11

Wyoming Statutes 1957 §30-4 1

Wyoming Statutes 1957 §30-6 1

Wyoming Statutes 1957 §30-7 1

Wyoming Statutes 1957 §30-8 1

Miscellaneous:

Rule 19 United States Supreme Court Rules 28 U.S.C. 7, 8

Rule 23.4 United States Supreme Court Rules 28 U.S.C. 12

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-77

RASMUSSEN DRILLING, INC.,
a Colorado Corporation licensed to
do business in Wyoming,
Petitioner,

v.

KERR-McGEE NUCLEAR CORPORATION
AND
KERR-McGEE CORPORATION,
Respondents

RESPONDENTS' STATEMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

OPINION BELOW

The opinion of the Tenth Circuit Court of Appeals is reported at 571 F.2d 1144 (1978).

STATUTES INVOLVED

Wyoming Statutes 1957, §§ 30-1, 30-2, 30-3, 30-4, 30-6, 30-7 and 30-8 (Appendix, pp. 15-20).

QUESTIONS PRESENTED

The statement of "Questions Presented" in the petition is at best unclear.

It is suggested that the questions presented actually are the following:

1. Should the Supreme Court grant certiorari in a private dispute where the District Court and the Court of Appeals have affirmed a jury verdict, where there are no conflicts in decisions of state or federal courts as to the applicable law, and in the absence of a showing of special and important reasons therefor?

2. In the absence of federal or constitutional questions, are statutory interpretations by a State's highest court of that State's laws reviewable on certiorari?

STATEMENT OF THE CASE

Petitioner's statement of the case appears variously under the headings "Questions Presented," "Statement" and "Reason for Granting the Writ." Some of the statements in the petition are incomplete and do not accurately reflect the state of the record, the opinion of the Court of Appeals or the jury verdict rendered. The following substitute statement of the case is offered (although a detailed summary of the facts appears in the United States Court of Appeals for the Tenth Circuit's opinion attached to the Petition as Appendix D):

Prior to 1967, Kerr-McGee[1] had been actively engaged for several years in a widely known uranium exploration program in the South Powder River Basin, which area included Section 17, Township 35 North, Range 75 West, 6th P.M., Converse County, Wyoming. In 1967, deep exploratory drilling and other geological studies conducted by respondents on Section 17 led to its decision to locate lode mining claims thereon. Kerr-McGee negotiated and obtained surface agreements with the landowners of Section 17 and hired Worthington, Lenhart & Associates, Inc., an independent contractor to coordinate the surveying, staking and validation drilling necessary to locate the "Yike" claims. Location work began October 30, 1967, validation holes were drilled in November, and location certificates containing both the legal and metes and bounds descriptions of the claims were filed and recorded in Converse County on or about December 27, 1967. Although adverse weather conditions and accommodation of surface owner requests that work cease during lambing season prohibited a few side center stakes from being completed until the following May, all of respondents' location work was completed prior to Rasmussen's entry and overstaking activities.

Due to a clerical error in the recorded location certificates, the Yike claims were described as being located in Section 19, rather than Section 17. However, the metes and bounds descriptions accurately described the location of the claims so that the claims could only be situated in Section 17. Since locating the Yike claims, Kerr-McGee has per-

---

[1]Kerr-McGee Nuclear Corporation is a wholly-owned subsidiary of Kerr-McGee Corporation. The distinction between the two entities is irrelevant to the issues herein and they will jointly be referred to as "Kerr-McGee" or "respondents" hereafter.

formed the statutory annual assessment work, has continued to pursue diligently a comprehensive exploration and development program in Section 17, and has applied for a patent of the Yike claims.

In approximately June of 1968, Ed Engleman, a landman employed on behalf of Rasmussen,[2] conducted a cursory examination of the records in the Converse County Courthouse for the purpose of determining which land within a designated "area of interest" might be open for claim location. The area of interest included both Sections 17 and 19 whose Northeast and Southwest corner boundaries, respectively, abutted one another. Engleman found no location certificates filed on Section 17, but he did discover a double filing on Section 19, which was admittedly unusual. After making a note of the book and page number of the double filing of claims, this information was passed on to Rasmussen. Engleman testified that had he conducted more than a cursory examination, he would have plotted the metes and bounds descriptions contained in the double filings which would have revealed that the Yike claims were actually situated in Section 17 rather than 19. However, Rasmussen did not personally conduct or authorize a more detailed examination of the records even in view of this unusual circumstance.

Although Rasmussen testified at trial that there were no Kerr-McGee stakes on Section 17 in June and July 1968, respondents presented substantial testimony to the contrary. In particular, Florence Coates, a resident in Section 17 testified that she observed most of the staking of the Yike claims in 1967, that she personally inspected

---

[2]Lowell Rasmussen is the president and principal stockholder of petitioner Rasmussen Drilling, Inc., which will hereafter be referred to as "Rasmussen" or "petitioner."

the claims thereafter in her routine work at the ranch and that the claims were still posted in July 1968, and that she saw Rasmussen "checking" Kerr-McGee's stakes; William J. Smith, a surface owner in Section 17, testified he watched Kerr-McGee validate the claims in the fall of 1967; William Hodge Brown, an attorney retained to render a title opinion by a prospective purchaser of Rasmussen's "Joy" claims, testified that Rasmussen admitted seeing stakes and a copy of a "Yike" location certificate posted on Section 17 prior to locating his "Joy" claims. Furthermore, one of the original Yike claim stakes posted by Kerr-McGee contractor, Worthington, Lenhart & Associates, in October 1967 was produced at trial by H. L. Worthington, the senior member of that firm, who testified it was one of several he had seen on Section 17 a few days before trial, some eight years later! Respondents further presented voluminous evidence and uncontradicted testimony by approximately a dozen witnesses that all physical acts on the Yike claim location, including discovery of a valuable mineral, were completed prior to Rasmussen's entry on Section 17 in July 1968. There was also considerable corroborating testimony that the Yike claim stakes were posted and visible on Section 17 prior, during, and subsequent to Rasmussen's overstaking.

Despite the anomaly in the records and the physical evidence of respondents' claims on Section 17, petitioner nevertheless proceeded with its overstaking in July of 1968 and filed location certificates for its Joy claims on July 17, 1968. This fact was published in a trade journal which came to the attention of respondents giving them their first notice of petitioner's claim-jumping activity. They immediately checked, found their error and filed amended location certificates on August 8, 1968, correcting the clerical error.

or less routine dispute between private litigants. This Court does not "sit for the benefit of particular litigants." *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955).

The trial court's instructions and the holdings of the appellate court were in conformity with applicable Wyoming law. There is no conflict with decisions of other circuits, no conflict with the decisions of this Court and no departure from accepted judicial procedure. Moreover, because this case depends upon its own facts, and presents no matters of new public significance, there would be no precedential value in a United States Supreme Court decision on it. There is, therefore, no reason for granting certiorari in this case under the standards as set forth in United States Supreme Court Rule 19, 28 U.S.C.

Petitioner implies that this Court should grant certiorari because the Court of Appeals has imposed a novel and unprecedented requirement, namely that a junior locator must conduct a "detailed" check of the records. Petitioner argues that the appellate court has ignored and modified statutory requirements. Petitioner mischaracterizes the decision of the Tenth Circuit. The appellate court imposed no new requirement. It simply determined that petitioner failed to do all that, on the particular facts of the case, it should have done.

Both courts recognized that if petitioner had *actual* notice of respondents' mining claims, it was not necessary to check courthouse records. Because there was ample and compelling evidence of petitioner's actual notice, the jury did not have to concern itself about constructive notice or whether a detailed check of county records was made. The courts correctly applied settled principles of law to the facts

of the case. There has been no judicial legislation, and there is no reason for this Court to review this case.

B. Petitioner Has Presented No True Issue For Resolution By This Court. Purely Factual Issues and a State's Interpretation of It's Local Laws Are Not Proper Matters for Review on Certiorari.

1. Petitioner poses the question:

"Is there any statutory law requiring locator [in this case Junior Locator] to make a detailed check of the County Records other than in the section of the County Records where the Documents should be filed?"

This question epitomizes petitioner's misconstruction of the decision of the Court of Appeals. The court did not rule that a locator, senior or junior, must make a "detailed" check of county records other than in the proper section. The jury and court determined, first, the *facts* that petitioner had actual knowledge of respondents' claims based upon seeing physical evidence of respondents' prior claims activities so that constructive notice was unnecessary and so that petitioner could not take advantage of defects in the record. Second, the court upheld the jury's implicit findings that petitioner knew of staking and other work by Kerr-McGee on Section 17 and knew that, while there was no filing indexed to Section 17, there was a double filing on Section 19 suggesting a mistake. On the basis of this cumulative information known to petitioner, the appellate court held, petitioner should be charged with what a further check would have revealed, i.e., that the metes and bounds description on the subject Kerr-McGee certificate in fact described Section 17. Had petitioner acted on its knowledge that Kerr-McGee had done work on Section 17 and inquired

further and had petitioner made a more thorough check of the records, it would have had actual knowledge of Kerr-McGee's claims from that alone. Thus, the first question stated by petitioner is not presented at all by this case.

2. Petitioner's second question is:

"Must a locator follow statutory requirements?"

The question is rhetorical and presents no issue. Neither the court nor the litigants have suggested the contrary. The trial court carefully instructed the jury on the statutory requirements necessary to perfect a mining claim. The jury obviously found, and the Court of Appeals affirmed the determination, that respondents had performed the statutory requirements prior to petitioner's establishing any valid claim.

3. Petitioner's third question is:

"Does actual or constructive notice negate a Junior locator's rights when there is no statutory statement regarding notice?"

Presumably by this petitioner is challenging the legal proposition that actual or constructive knowledge of a prior claim defeats the right of a junior claimant, on the basis that no Wyoming statute specifically states this element.

Regardless of its source, statutory or decisional, it is settled law in Wyoming that a junior locator must enter in good faith and without knowledge, actual or constructive, of a prior claim. Wyoming statutory law, which was the basis of instructions to the jury and of the appellate court's opinion, clearly requires a locator to give actual

notice of his claim by posting on the ground (Wyoming Stat. § 30-3) and constructive notice by filing his claim of record (Wyoming Stat. § 30-1(4)-(6)). The purpose of giving such notice is obviously to preserve a senior claim against claims of subsequent locators. It is the logical and necessary extension of the notice requirements that notice, however acquired, prevents a subsequent locator from claiming over a prior locator. The fact finding here was that Rasmussen had notice.

4. The final question is:

"Is a claim valid when locator has failed to perform all of the statutory requirements?"

This question seems to rephrase the second question and, like it, is rhetorical and irrelevant to this case. No argument has ever been made that a locator's claim is valid when statutory requirements are not performed. The lower courts did apply the settled Wyoming decisional law that a senior locator's substantial compliance with statutory requirements will be construed liberally so as not to defeat his claim by technical criticism made by a junior overstaker acting in bad faith and seeking to oust him. *Hagerman* v. *Thompson*, 68 Wyo. 515, 235 P.2d 750 (1951). In this case, as the lower courts determined, respondents substantially complied with all statutory requirements prior to petitioner's entering upon Section 17.

Obviously, one of the key issues before the jury was the credibility of the witnesses' testimony because there was a direct conflict over several issues, including that of actual knowledge. The Court of Appeals pointed to the persuasive corroborative testimony from disinterested, unbiased witnesses who testified for respondents. In affirming the judgment on the jury's verdict, the Tenth Circuit said:

> "We hold, however, that there is substantial evidence in the record to support the jury verdict on the basis of Rasmussen's *actual notice* of the Kerr-McGee claims in place on the ground, together with *constructive notice* of the original filings of the Yike certificates, even though they were recorded in Section 19 rather than Section 17." 571 F.2d at 1156-1157.

This Court should not be drawn into a review of such findings of fact by a jury.

Rule 23.4, United States Supreme Court Rules, 28 U.S.C., is applicable in view of the fact that this petition is no more than a print-out of petitioner's earlier *pro se* petition which was rejected by the Clerk of this Court. The central theme of the petition remained intact, i.e. the claimed error by both the District Court and the Court of Appeals was that their respective rulings constituted "judicial legislation." Petitioner fails to clarify what this may mean, arguing only that it amounts to a constitutional violation of the separation of powers between the legislature and the judiciary. Petitioner claims that such allegedly unconstitutional "judicial legislation" resulted from the court (without specifying which court) requiring "that which is not law" (detailed check of records within a county), or "by stating that a statute may be substantially complied with." Clearly what the courts did is nothing more than statutory construction or interpretation which is one of the principal functions of our judicial process.

No conflict with state law has been shown. On the contrary, the District Court's jury instructions were all based on applicable Wyoming statutes and case law as well as other cases decided by the Tenth Circuit and this Court.

A senior locator's substantial compliance with statutory requirements will be construed liberally so as not to defeat his claim by technicalities. A party seeking possession of real property must prevail on the strength of his own rights or title and not on the weaknesses of his adversary's rights or title. *Columbia Standard Corp.* v. *Ranchers Exploration & Development Co.*, 468 F.2d 547 (10th Cir. 1972), *cert. denied*, 410 U.S. 991 (1973); *Kanab Uranium Corp.* v. *Consolidated Uranium Mines, Inc.*, 227 F.2d 434 (10th Cir. 1955); *Ranchers Exploration & Development Co.* v. *Anaconda Co.*, 248 F. Supp. 708 (D. Utah 1965). A locator must make a good faith entry, and defects of the senior locator are ignored where the junior locator's entry was in bad faith. *Union Oil Co.* v. *Smith*, 249 U.S. 337 (1919); *Columbia Standard Corp.* v. *Ranchers Exploration & Development Co., supra.* Where there is actual notice, constructive notice is unnecessary. *Globe Mining Co.* v. *Anderson*, 78 Wyo. 17, 318 P.2d 373 (1957). A subsequent locator with knowledge, actual or constructive, of a prior locator has a duty to make inquiry as to the extent of the prior locator's efforts. *Columbia Standard Corp.* v. *Ranchers Exploration & Development Co., supra.*

CONCLUSION

For the reasons stated above, respondents submit that petitioner has wholly failed to sustain its burden of establishing under Rule 19 or otherwise that there are special and important reasons why the writ of certiorari should be granted and it therefore should be denied.

Respectfully submitted,

HOLME, ROBERTS & OWEN
PETER H. HOLME, JR.
EDMOND F. NOEL, JR.
Attorneys for Respondents
1700 Broadway, Suite 1800
Denver, Colorado 80290
Telephone: (303) 861-7000

OF COUNSEL:

WILLIAM T. SCHWARTZ, ESQ.
500 Consolidated Royalty Building
Casper, Wyoming 82601

APPENDIX

WYOMING STATUTES INVOLVED

§ 30-1. *Recording mining claims required; requisites of certificate.*—A discovered of any mineral lead, lode, ledge, or vein shall, within sixty days from the date of discovery, cause such claim to be recorded in the office of the county clerk and ex officio register of deeds of the county within which such claim may exist, by a location certificate which shall contain the following facts:

1. The name of the lode claim;

2. The name or names of the locator or locators;

3. The date of location;

4. The length of the claim along the vein measured each way from the center of the discovery shaft, and the general course of the vein as far as it is known;

5. The amount of surface ground claimed on either side of the center of the discovery shaft or discovery workings;

6. A description of the claim by such designation of natural or fixed object, or if upon ground surveyed by the United States system of land survey, by reference to section or quarter section corners, as shall identify the claim beyond question.

§ 30-2. *Imperfect certificates void.*—Any certificate of the location of a lode claim which shall not fully contain all the requirements named in the preceding section [§ 30-1], together with such other description as shall identify the lode or claim with reasonable certainty, shall be void.

§ 30-3. *Prerequisites to filing location certificates.*—Before the filing of a location certificate in the office of the county clerk and ex officio register of deeds, the discoverer of any lode, vein or fissure shall designate the location thereof as follows:

1. By sinking a shaft upon the discovery lode or fissure to the depth of ten feet from the lowest part of the rim of such shaft at the surface;

2. By posting at the point of discovery, on the surface, a plain sign or notice, containing the name of the lode or claim, the name of the discoverer and locator, and the date of such discovery;

3. By marking the surface boundaries of the claim, which shall be marked by six substantial monuments of stone or posts, hewed or marked on the side or sides, which face is toward the claim, and sunk in the ground, one at each corner, and one at the center of each side line, and when thus marking the boundaries of a claim, if any one or more of such posts or monuments of stone shall fall, by necessity, upon precipitous ground, when the proper placing of it is impracticable or dangerous to life or limb, it shall be lawful to place any such post or monument of stone at the nearest point properly marked to designate its right place; provided, that no right to such lode or claim or its possession or enjoyment, shall be given to any person

or persons, unless such person or persons shall discover in said claim mineral bearing rock in place.

§ 30-4. *Additional location certificate to be filed upon change of surface boundaries or addition of new territory.*—Whenever it shall be apprehended by the locator, or his assigns, or any mining claims or property heretofore or hereafter located, that his or their original location certificate was defective, erroneous, or that the requirements of the law had not been complied with before the filing thereof, or shall be desirous of changing the surface boundaries of his or their original claim or location, or of taking in any part of an overlapping claim or location which has been abandoned, such locator or locators, or his or their assigns, may file an additional location certificate in compliance with and subject to the provisions of this act [§§ 30-1 to 30-26]; provided, however, that such relocation shall not infringe upon the rights of others existing at the time of such relocation, and that no such relocation, or other record thereof, shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under any previous location.

§ 30-6. *When open cut equivalent to discovery shaft; drilled hole in lieu of discovery shaft; requirements as to drilled hole.*—Any open cut which shall cut the vein ten feet in length, and with face ten feet in height, or any crosscut tunnel, or tunnel on the vein ten feet in length which shall cut the vein ten feet below the surface, measured from the bottom of such tunnel, shall hold such lode the same as if a discovery shaft were sunk thereon.

Provided however, that the discoverer of a mineral deposit may, at his option, in lieu of a discovery shaft, tunnel or pit otherwise required by provisions of law, and for

the same purposes, and under the same provisions, drill or cause to be drilled, a hole, or holes, in the manner and under the conditions and requirements hereinafter set forth:

1. The hole or holes shall be not less than 1½ inches in diameter.

2. The said hole or holes shall aggregate at least fifty (50) feet in depth, and no one hole shall be less than ten (10) feet in depth, and in the course thereof, at least one of which shall cut or expose deposits of valuable minerals sufficient in quality to justify a reasonably prudent man in expending money and effort in further exploration or development.

3. The discoverer shall designate one of the holes thus drilled as the discovery hole, in the event that more than one such hole shall have been drilled. The said hole shall be marked by a substantial post or other permanent marker, placed at and adjacent to the hole and within five feet thereof, firmly fixed in the ground, and extending at least thirty inches in height above the ground, and on which shall be placed the name of the claim, the owner thereof, the depth of the hole, and the date of the drilling thereof.

If, in drilling such hole or holes, a water-bearing stratum or strata is entered or cut by the drill, then, in such event, the hole shall be plugged back by or on behalf of the discoverers, locator or owner, who drilled the hole, or someone on his behalf, to a point immediately above such water-bearing stratum or strata, placing therein a plugging material or substance which is recognized and adequate to shut off said water-bearing stratum or strata. Within the time allowed by the provisions of 57-918 Wyoming Compiled Statutes, 1945 [§ 30-7], the discoverer, locator or owner,

or someone on his behalf, shall set forth in an affidavit hereinafter provided for, or in a separate affidavit, setting forth the depth said water strata was encountered and the facts of the plugging thereof.

The drilling of such hole, or holes, or the sinking of the shaft or making of the discovery pit otherwise provided for in this act [§§ 30-1 to 30-26] shall be made a matter of record by the recording in the office of the county clerk of the county in which the claim shall be situated the affidavit or sworn statement of the discoverer, locator, owner or his or their agents stating the date of such work, the nature thereof, the person or persons by whom performed, the location of such work within the claim, and the nature of the mineral discovered. Such affidavit may be a part of the location certificate to be thereafter recorded in accordance with the provisions of this act.

The creation of the rights provided for in this act are based upon the truth of the statements contained in such affidavit or statement and the certificate of location, herein otherwise provided for, and no rights of any kind or nature shall vest or exist or be created or arise when any material statement or representation therein made is false.

The owner of any mining claim located prior to the effective date of this act [§§ 30-1 to 30-26] and who has performed discovery work may avail himself of the provisions hereof by making the drill hole or holes herein provided for and filling any discovery cut previously made, and making and placing of record the affidavit herein provided for, together with a statement of the filling of such discovery pit or cut, and that the said work was done and the affidavit made for the purpose of obtaining the benefits of this act.

§ 30-7. *Period allowed for sinking discovery shaft or drilling hole.*—The discoverer of any mineral lode or vein in this state shall have the period of sixty days from the date of discovering such lode or vein in which to sink a discovery shaft thereon, or to make the open cut equivalent to such discovery shaft, or to drill the hole or holes hereinbefore provided.

§ 30-8. *Locators' rights of possession and enjoyment; "mineral boundaries" defined.*—The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of surface lines extended downward vertically although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize a locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.